

FILED

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

APR 17 2009

DAVID CREWS, CLERK
BY Mr. [Signature]
Deputy

LILLIE V. AKIN

PLAINTIFF

VS.

CAUSE NO. 1:09CV105-M-D

**WILLIAMS TRANSFER AND STORAGE
COMPANY, INC., AND AMERICAN VAN &
STORAGE CO., INC.**

DEFENDANTS

NOTICE OF REMOVAL

**TO: Joyce Roberts Loftin
Circuit Court Clerk, Lee County
P.O. Box 762
Tupelo, MS 38802**

Lee County Circuit Court Cause Number: CV09-030

**Michael D. Tapscott
Holland, Ray, Upchurch & Hillen
P.O. Drawer 409
Tupelo, MS 38802**

In accordance with 28 U.S.C. §§1331, 1337(a) and 1446(b) you are hereby notified that Defendants, Williams Transfer and Storage Company, Inc. and American Van & Storage Co., Inc. enter their special appearance through counsel and remove this action from the Circuit Court of Lee County, Mississippi, to the United States District Court for the Northern District of Mississippi, Eastern Division. The Defendants support the removal as follows:

1. On or about March 20, 2009, an action was commenced against Defendants in the Circuit Court of Lee County, Mississippi, entitled *Lillie V. Akin v Williams Transfer and Storage Company, Inc., and American Van & Storage Co., Inc.* with the assigned cause number of CV09-030. The following documents are attached as exhibits and incorporated herein:

- That portion of the state court record, including executed process, is attached hereto as Exhibit 1 and the remainder has been requested and will be filed upon receipt; and
- Plaintiff Lillie Akin's Presentation of Loss and Damage Claim is attached hereto as Exhibit 2.

2. Defendant Williams Transfer and Storage Company, Inc.'s first receipt of Plaintiff's Original Petition was through service of the Citation and Petition on it on or about March 20, 2009. No other pleadings have been filed. The remaining Defendant, American Van & Storage Co., Inc., has consented and joins in this removal notice.

3. This Notice of Removal is filed within thirty (30) days of Defendants' first notice or receipt of Plaintiff's Original Complaint and is therefore timely filed pursuant to 28 U.S.C. § 1446(b).

4. The above described action is a civil action of which this Court has original jurisdiction under the provisions of 49 U.S.C. § 14706 (Carmack Amendment), and may be removed to this Court by Defendants pursuant to the provisions of Title 28 U.S.C. §§ 1441 and 1445(b), in that the above-described action is a civil action involving a claim by Plaintiff for alleged loss and damage to a shipment of household goods that was being transported in interstate commerce from Shreveport, Louisiana to Tupelo, Mississippi. This action could have originally been brought in this Court. The above-described action arises out of the interstate contract of carriage and the applicable Carmack Amendment, 49 U.S.C. §14706, which governs the liability of a carrier providing transportation services in interstate commerce within the jurisdiction of the Surface Transportation Board. Plaintiff's Original Complaint, which is incorporated herein as if fully set forth, details additional factual allegations falling within the

federal question jurisdiction provided by 49 U.S.C. § 14706, 28 U.S.C. § 1331 § 1337(a). Furthermore, the claims made in Plaintiff's Original Petition are completely preempted and removable pursuant to *Hoskins v. Bekins Van Lines*, 343 F.3d 769 (5th Cir. 2003).

5. Plaintiff's Complaint does not state on its face the amount of damages she seeks. However, the Claim attached hereto as Exhibit 2 indicates that Plaintiff seeks damages in excess of \$ 10,000.00 (Exhibit2). Courts will typically look beyond the face of a complaint in order to determine whether removal is proper. *Baccus v. Parrish*, 45 F.3d 958, 961 (5th Cir. 1995); *Villareal v. Brown Express*, 529 F.2d 1219, 1221 (5th Cir. 1976); *Keating v. Shell Chemical Co.*, 610 F.2d 328, 331 (58th Cir. 1980); *Hale v. TaTa Corporation*, 502 F.Supp.502 (S.D. Tex. 1980); 14C Wright, Miller & Cooper, *Federal Practice and Procedure, Juris 3rd*, § 3734 (2006 Supp.). Where, as here, the petition does not include a specific monetary demand, Defendant can establish that the amount in controversy exceeds \$ 10,000.00 because the claims are likely to exceed the statutory minimum, and by showing the Court evidence that supports a finding of the requisite amount. *Manguno v. Prudential Prop. & Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002); *DeAuilar v. Boeing Co.*, 11 F.3d 55, 58 (5th Cir. 1993); *Valizadeh v. Wal-Mart Stores, Inc.*, 2005 WL 3262556 (S.D. Tex. 2005); *Lewis v. State Farm Lloyds*, 205 F.Supp.2d 706, 708 (S.D. Tex. 2002). The attached Exhibit 2 clearly demonstrates that the amount in controversy requirement has been satisfied. Pursuant to the damages claimed by Lillie V. Akin, Plaintiff's claim for damages to the interstate shipment of goods is in the amount of at least \$ 10,000.00.

6. Title 28 U.S.C. § 1441(b) provides that:

Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under . . . the laws of the United States shall be removable without regard to the citizenship or residence of the parties."

Title 28 U.S.C. section 1337(a) provides that:

The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulation commerce or protecting trade and commerce against restraints and monopolies: *Provided, however*, That the district courts shall have original jurisdiction of an action brought under section 11706 or 14706 of title 49, only if the matter in controversy for each receipt or bill of lading exceeds \$ 10,000.00 exclusive of interest and costs.

Title 28 U.S.C. § 1445(b) makes non-removable “a civil action in any state court against a carrier. . .to recover damages for delay, loss, or injury of shipments arising under Section 11706 or 14706 of Title 49, ... unless the matter in controversy exceeds \$ \$10,000.00 exclusive of interest and costs.”

7. Since Plaintiff's claims against Defendants arise from interstate transportation of Plaintiff's goods, and since Plaintiff's claims exceed \$ 10,000.00 this matter is properly removed.

8. Written notice of the filing of this Notice of Removal has been given to all parties herein, and a copy of this Notice has been mailed to the Circuit Clerk of Lee County, Mississippi.

WHEREFORE, Defendants remove this action from the Circuit Court of Lee County, Mississippi, to this court on or about this 16th day of April, 2009, pursuant to 28 U.S.C. § 1446.

Respectfully submitted,

WILLIAMS TRANSFER AND STORAGE
COMPANY, INC.

By Its Attorneys

DunbarMonroe, PA

BY:


Clark Monroe
(gcmonroe@dunbarmonroe.com)

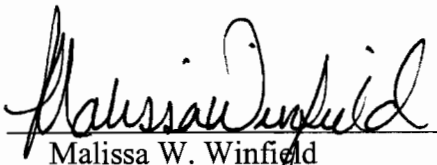
Counsel for:
Williams Transfer & Storage
Company, Inc.

G. Clark Monroe, Esq. (MSB # 9810)
Dunbar Monroe, PA
270 Trace Colony Park, Suite A
Ridgeland, Mississippi 39157
Telephone (601) 898-2073
Facsimile (601) 898-2074

AMERICAN VAN & STORAGE CO, INC.

By Its Attorneys

Butler, Snow, O'Mara, Stevens & Cannada, PLLC

By: 
Malissa W. Winfield
(malissa.winfield@butlersnow.com)

Counsel for:
American Van & Storage Co., Inc.

Malissa W. Winfield (MSB # 100751)
Butler, Snow, O'Mara, Stevens & Cannada, PLLC
P.O. Box 22567
Jackson, Mississippi 39225
Telephone (601) 985-4409
Facsimile (601) 985-4500

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on via U.S. Mail, on the following:

Joyce Roberts Loftin
Circuit Court Clerk, Lee County
P.O. Box 762
Tupelo, MS 38802

Michael D. Tapscott
Holland, Ray, Upchurch & Hillen
P.O. Drawer 409
Tupelo, MS 38802

This the 16th day of April, 2009.


Clark Monroe

03/23/2009 11:25 5628449749
FBI - MEMPHIS FAX 56284420450WILLIAMS TRANSFER
MMS-TUPELOPAGE 04/07
0000007

IN THE CIRCUIT COURT OF LEE COUNTY, MISSISSIPPI

LILLIE V. AKIN

PLAINTIFF

V.

CAUSE NO. CV09-030(R)(L)WILLIAMS TRANSFER AND STORAGE
COMPANY, INC., AND AMERICAN VAN &
STORAGE CO., INC.

DEFENDANTS

SUMMONS
(Process Server)

THE STATE OF MISSISSIPPI

TO: Williams Transfer and Storage Company, Inc.
Albert G. Delgadillo, Registered Agent
105 South Front Street
Tupelo, Mississippi 38802

NOTICE TO DEFENDANT(S)

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU
MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS.

You are required to mail or hand-deliver a copy of a written response to the Complaint to
MICHAEL D. TAPSCOTT, the attorney for the Plaintiff(s), whose post office address is POST
OFFICE DRAWER 409, TUPELO, MISSISSIPPI 38802-0409, and whose street address is 322
JEFFERSON STREET, TUPELO, MISSISSIPPI 38804. Your response must be mailed or
delivered with (30) days from the date of delivery of this Summons and Complaint or a judgment
by default will be entered against you for the money or other things demanded in the Complaint.

You must also file the original of your response with the Clerk of this Court within a
reasonable time afterward.

Issued under my hand and the seal of said Court, this 19th day of March
2009.

Circuit Clerk of Lee County, Mississippi



[SEAL]

J. R. Austin / V. Watson

03/23/2009 11:25 6528449749
US/20/2009 18:13 FAX 8828428450

WILLIAMS TRANSFER

PAGE 03/07

WMS-TUPELO

002/007

MITCHELL, McNUTT & SAMS

A PROFESSIONAL ASSOCIATION

213 FIFTH STREET NORTH
POST OFFICE BOX 1386
COLUMBUS, MISSISSIPPI 39701-1386
(662) 328-2916
FACSIMILE (662) 328-8033

1215 VAN BUREN
POST OFFICE BOX 947
OXFORD, MISSISSIPPI 38655
(662) 334-4913
FACSIMILE (662) 334-8971

ALBERT G. DELGADILLO
DIRECT (662) 620-6284

EMAIL: adelgadillo@mtmcsmc.com

105 SOUTH FRONT STREET
POST OFFICE BOX 7120
TUPELO, MISSISSIPPI 38802-7120
(662) 842-3871
FACSIMILE (662) 842-8450

508 WALLBRON STREET
POST OFFICE BOX 1200
COKIN, MISSISSIPPI 38511-1200
(662) 286-9001
FACSIMILE (662) 286-8984

22 NORTH FRONT STREET,
SUITE 1000
MEMPHIS, TENNESSEE 38104
(901) 327-3582
FACSIMILE (901) 327-3361

March 20, 2009

VIA FACSIMILE
844-9749
AND U.S. MAIL

Mr. J. Michael Williams
Williams Transfer & Storage Company, Inc.
P.O. Box 908
Tupelo, MS 38802

Re: Lillie V. Akin v. Williams Transfer and Storage Company, Inc.
Circuit Court of Lee County
Cause No. CV09-030(R)(L)

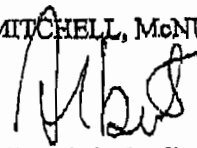
Dear Mike:

As we discussed in our telephone conversation this afternoon, I am enclosing the Summons and Complaint in the above referenced matter which I was served with today, March 20, 2009. A written response must be filed within 30 days from this date. It is important for you to place your insurance carrier on immediate notice of this lawsuit. Please let me know if I can be of any assistance in this matter.

With best regards, I am

Sincerely yours,

MITCHELL, McNUTT & SAMS, P.A.


Albert G. Delgadillo

AGD/cn
Enclosure

Raymond and Lillie Akin
 Destination Address: 2558 St. Andrews Dr.
 Belden, MS 38826

Home 662-841-2223

Cell 619-961-7177

Cell 619-961-7140

Waived right
 to check
 off

Art of Perm? 2007
 Ctn dng exceptions
 V.A.5
 Dish
 Lamp
 V.A.5

Item	Article	Description of Damage	Age Date Purchased	Original Cost	Replacement Cost today	Cost of Repair	Notes
1)	2 Crystal Stained water glasses.	Waterford Crystal	2004-3 yrs.	65.00 X 2 = 130.	Same	Broken Dish	PACK Dmg. Ctn dng?
2)	1 Coal Pittman Coffee mug.	Coal Pittman	2003 4 yrs.	26.50	Same	Broken Dish	PACK
3)	1 Ceramic Tea Pot	decorative item except with chipped surface.	2003 4 yrs.	30.00	Same	Broken Dish	PACK
4)	1 Designer Mirror	LaBarge mirror from Isbell, Gledhill + Wolfe - Memphis, TN * I, G, W.	?	\$1,400.	same(?)	Trunk broken off	PACK → R175
5)	1 Designer Mirror	Decorative Arts from * I, G, W.	?	\$8500.	same(?)	top trim chipped	PACK → R750-1,250
6)	1 Decorator Mirror	LaBarge mirror * I, G, W.	?	\$1,200.	same?	about 2-3cm - top of mirror trim about 60cm long.	PACK → R120
7)	1 centerpiece for dining room table	- Great City Traders Black wrought iron with hanging arms there were 2 bowls at the top, and on hanging arms (used to plant candle and flowers)	?	\$1,500.00	same?	Bowls were broken - 6 missing	PACK

7042.50



Item #	Article	Description of Item	Age / Date Purchased	Original Cost	Replacement Cost	Cost of Repair	Notes	1/2 Rem
331/332	8. Sleigh bed Master bedroom	Timberlawn and missing at foot and head - Lexington	2001-2002	\$1,100	\$1,700 (?)	(?)	R 300-400	1/2 Rem
9.	Designer curtain (drapes - pillow) for Sleigh bed	Margandy/Beige Made by Marge Wilmer	2001-02	\$6,000	2000 (?) she has moved from area	?	MISSING	
10)	center rods for 4 bedrooms drapes - broken	Broken metal or missing	2000, 10/02	?	?	?		
11)	painting	Duke's Unlimited "Night flight" damaged frame	?	\$700	?	?	PAINT	
12)	1 glass top table - Henderson	includes missing Henderson table seats \$15,000	2001	\$5,800	?	?	2. (order the missing part) R-400-500	
13)	1 chrome table for bridge	glass top missing	2000	\$1,500	?	?	FOUND WITH	
14.	4 chairs	Henderson Tables matching chairs - multiple cracks on arms - back legs.	2001	\$1,500/each \$6,000 total	?	?	NOT TRANSIT related	
15.	TABLE for	Marble top arrived	2000 2001	\$1,600	\$1,600 (?)	?	no way - 300 party - 2000	

PAGE 07/13

WILLIAMS TRANSFER

6626449749

01/11/2008 14:39

Page 3

Article	Description of damages	Age/ date of purchase	Original cost	Replacement cost.	Cost of repair
(16) 1 Round living room table with marble top.	Marble top delaminated in 4 places Thomsonville	2000-01	\$1,200	\$1,200 ?	Cost of repair New marble top - ?
(17) Boston Roche	right arm damage	? - 1997(?)	\$400 ?	\$400 (?)	note arm (climatic - ?) -
(18) 2 beds - upstairs missing parts - (unknown from your company David they couldn't put them together - parts missing.)	2 Wally Allen beds - parts missing - must have so beds can be put together	2001- (?)	\$1,700 saler \$3400	\$3400 (?)	get missing parts ordered - 2 Missing from S
(19) 1 bed. Captain's Quarter Thomsonville - King	2 posts are broken on one side of bed. Some are "gashed" them off, rather than unscrewing them.	2000-01	\$895 #36611-476 (on invoice)	\$1,895(?)	get it repaired - (?)
(20) 1 hour painting John Richard	glass broken	2000-01	\$99	\$99 (?)	WIT year glass - (2)

3rd party - broken marble

66400
1001-01

WIT year glass - (2)
ACK - R150-301

Page 4.

Article	Description of Damage	Age/date of purchase	Original cost	Replacement cost	U.S. cost of repair	Pack
(21) 3 lamps shades damaged	shades damaged - minus 1 cannot use lamp.	2001-6 62	\$599.00 \$199.00 799.00	same	replace shades	Pack
(22) 1 three large decorative item from Richard's fireplace	missing trim	-2001-02?	\$499.00	same?	?	W+H
(23) 1 Lucite stationary holder	front broken off	?	\$10.00 (?)	?	?	Pack
(24) 1 broken egg in silver centerpiece part of set of 3 Kinder Harris	broken egg	?	150 each set is \$450	\$450	replace Pack the missing	
(25) 1 lamp shade Kinder Harris	broken top ornament	2002-?	\$25.00	\$25 (?)	(?) repair top?	Pack
(26) 1 lamp Kinder Harris chipped	chipped	2001-22	\$499.00	\$499 (?)	(?)	Pack
(27) 1 Chippendale table - edge scratched	table edge damage	?	\$3500	\$3500	(?) RAOB-500 Hand	

1.9.60

Page 3.

article	Description of Damage	Qty/Date Purchase	Original Cost	Replacement cost.	cost of repair
(28) Ernest Hemingway Dunbar piece in entry Hall - Maitland Smith	damaged top two cush + chip out of it.	- 2000-01	\$350.00	\$350.00 - (?)	(?) not even close c/o 4,752.50 w/out \$3500 w/ shipping & haul
(29) Decorative chair/mirror Living room - Country French - S.G. W., Century	arm off.	2000-01	\$2499	\$2499 (?)	replace arm - d have it. REO
(30) 1 Sofa - liv. room Century	fabric torn on bottom and rollers off (mirrored)	2000-01	\$4300	\$4300 (?)	replace rollers - RTS-50 mend bottom of sofa (?)
(31) Planter and plants living room Maitland Smith	pill plants ruined	- 2000-01	\$425	\$425 (?)	replace plants. PICK
(32) 2-2 1/2 ft. tall planter. Florida Nova	containes bottom - broken	- 2000-01	\$399.00	\$399 (?)	need new planter - PICK
(33) 1 Bedroom furniture dress mirror Wesley Allen Pulaski	mirror broken	- 2000-01	\$425	\$425 (?)	replace mirror (?) PICK
(34) 1 Shunk mirrored Primer plate	broken	- ?	\$22.50	\$22.50 (?)	replace (?) PICK 50

- 41 Pic Frame glass modern frame covered 1000 Pack R 100.250
- 42 Chair Cushion top covered in cream color fabric
 of cream color fabric
 left base - beige
 middle base - beige
 right end - beige R 600.000 Perm
 White
- 43 Designer Place broken 1000 Pack
- 44 Designer Place glass mirror 1000 Pack
- 45 Designer Place 1. mirror
 2. lamp 1000 Pack
- 46 Designer Place 1. mirror
 2. lamp 1000 Pack
- 47 Sink & faucet arrangement - 1000 Pack 1000 Pack
- 48 Small pic frame 1000 Pack 1000 Pack
- 49 Small pic frame 1000 Pack 1000 Pack
- 50 Small pic frame 1000 Pack 1000 Pack

4582.58

1. Torchiere lamp
1. platinum thermometer - chipped -
I called the day of the unloading as these pictures / broken / missing were
astronomical in number, but you (and another call to another rep.) said
you would send me papers to fill out, and didn't want to come
out to see the damage - So, I continued to unpack & sent
2 women to unpack and put away -
NEVER did you mention sending inventory numbers and/or weight -
I gave you the boxes back (which the men said was usual) - none
mentioned any of the other on you but - like weight - I have
been in an automobile accident and you were gracious over the phone
to take me to the hospital. I have made several trips to "Old Hecock
town" -

Page 7,

them to present when I discovered the urban abuse of our
of my discretion from Hancock — Karen Treavor she was helped
in locate old invoices and prices of items she was interested in
my grandchild —
Her cell is 662-322-3062
home - 662-841-0222 -
work - 662-841-0222 -

I have employed teams to help me make this above information
accurate as possible. This has really taken me days looking for
records, and inventorying damage — I haven't even looked at the 3
classline in the package —
I had 1/2000 on my furniture while — storage —
I feel with this kind of damage, there was absolute movement in the
storage — or moving around — or packing of my furniture! — Or —
did they have a warehouse? — Was in transit thing in my china cabinet
(and, I had a lot) had very minor damage! —
Not set this taken care of so I can put my home
together — Thanks —
Gillian Linn

Williams Transfer & Storage
Post Office Box 908
Tupelo, Ms. 38801
1-800-752-6350
attention Donna Chapman

Claimant NAME

Lillie / Raymond F. Akin

Address:

2538 St. Andrews Dr.

BELDEN, MS 38826

home phone 662 841 2223

cell - Lillie - 619 961 7177

cell - Raymond - 619 961 7140

Furniture was in climate controlled storage 3 years
Shipment moved from: October 21 '04
Tupelo (VERONA) Mississippi
To:

Shreveport, La. - stored until late October
then shipped back to BELDEN (Tupelo) MS. ²⁰⁰⁷
on Oct. 16 - then continue on 17+18 ^(damages)
- There was a pick up date - Storage (all by yourself) ^(2 months)
then pick up - Delivery back to Tupelo -

Shipment was in a warehouse in Shreveport, La.
I was told this was a large climate controlled
facility. I had \$150,000.00 insurance on
my stored furniture.

I, Lillie Akin, am the owner of the
furniture valued between \$200,000 & \$300,000

you never issued a certificate. you just
increased my amount to pay monthly -
check your records.